



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/158067

PRELIMINARY RECITALS

Pursuant to a petition filed May 30, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on September 18, 2014, at Kenosha, Wisconsin.

The issue for determination is whether the Kenosha County Department of Human Services correctly ended the Petitioner's FoodShare benefits effective June 1, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Karen Mayer, Fair Hearing Representative
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. The Petitioner applied for Foodshare benefits on April 15, 2014. (Exhibit 7)
3. The Petitioner is a "drug felon". (Exhibit 1 and Exhibit 7)

4. The Petitioner has been struggling with drug addiction and on or about April 16, 2014, the Petitioner used cocaine. (Testimony of Petitioner)
5. The Petitioner also took medication that she believes is cocaine-based. (Testimony of Petitioner)
6. On that same date the Petitioner provided a urine sample for drug testing, that yielded a positive result for cocaine metabolites. (Exhibit 3)
7. On May 12, 2014, the agency sent the Petitioner a notice indicating that her Foodshare benefits would be ending effective June 1, 2014, because she failed a drug test. (Exhibit 6)
8. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 29, 2014. (Exhibit 1)

DISCUSSION

A “drug felon” is “a person (adult or minor) who is convicted of a felony in state or federal court involving the possession, use or distribution of a controlled substance within the last 5 years.” *FoodShare Wisconsin Handbook (FSH) §3.20.1*; *See also 7 C.F.R. 273.11(m)*

“Applicants who meet the definition of a drug felon and agree to take a drug test will be tentatively approved until a drug test is taken...If the drug test result is positive, the individual is ineligible for 12 months from the next possible payment month...” *FSH §3.20.1.1*

In the case at hand, the Petitioner did not dispute the agency’s contention that she has been convicted of a felony involving the possession, use or distribution of a controlled substance within the last five years.

The Petitioner, in her testimony, honestly admitted that she used street drug type cocaine around the time she submitted a urine sample for testing and would not be surprised if her urine tested positive for cocaine use. The documentation submitted by the agency indicates that the Petitioner did, in fact, test positive for cocaine use.

As such, per *FSH §3.20.1.1* the agency correctly ended the Petitioner’s FoodShare benefits effective June 1, 2014.

CONCLUSIONS OF LAW

Per *FSH §3.20.1.1* the agency correctly ended the Petitioner’s FoodShare benefits effective June 1, 2014.

THEREFORE, it is

ORDERED

That the Petition be dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as

"PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

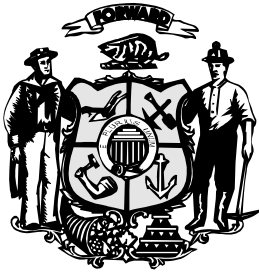
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 19th day of September, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 19, 2014.

Racine County Department of Human Services
Division of Health Care Access and Accountability